

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF BERTON FISHER, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 3rd day of
September, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

3

1 prior to the haying.

2 Q Just thumbing through your field notebooks,
3 you found cattle at quite a few of the edge of field
4 locations, did you not?

5 A I found horses at one location. I think I 10:42AM
6 found -- if I remember the count correctly, I think
7 of the 64 individual locales, seven -- I think seven
8 of those locales had cattle.

9 Q Who have you shared the information reflected
10 in Exhibit 10 with other than me and Mr. Garren? 10:42AM

11 A I've provided it to Mr. Garren, who provided
12 it to you, and so at this time with no one else.

13 Q You haven't provided that information to
14 anyone at CDM?

15 A No, not yet. 10:43AM

16 Q Did you discuss with anyone at CDM or any
17 other member of Motley Rice's expert team in this
18 case the fact that you were going to be conducting
19 site visits this past weekend?

20 MR. GARREN: Object to form. 10:43AM

21 A I didn't have any discussions with any of the
22 CDM folks who work on behalf of the Attorney General
23 that I was conducting any site visits this past
24 weekend.

25 Q What about any other member of the expert team 10:43AM

TULSA FREELANCE REPORTERS
918-587-2878

1 retained by Motley Rice?

2 A I had no discussions with any individuals
3 working on behalf of the Attorney General in a
4 technical capacity concerning this.

5 Q When you say individuals working on behalf of 10:43AM
6 the Attorney General in a technical capacity, are
7 you referring to the experts hired by Motley Rice?

8 A I'm referring to the experts who are working
9 on behalf of the Attorney General.

10 Q Who's paying their bills? 10:44AM

11 A Well, I know who pays my bills.

12 Q And who is that?

13 A Motley Rice.

14 Q Do you have any reason to think that other
15 members of the expert team are being paid by someone 10:44AM
16 other than Motley Rice?

17 MR. GARREN: Object to form.

18 A I don't know who they're being paid by. I
19 don't do their billings; I don't get their checks.

20 Q Let's go to your expert report. If we could 10:44AM
21 look at Opinion No. 1, and not on the table of
22 contents, if you will, but the actual opinion that
23 appears in the text, and Opinion No. 1 you state
24 that the defendants' actions and practices have
25 polluted surface water, groundwater, soil and 10:45AM

TULSA FREELANCE REPORTERS
918-587-2878

1 alternative method for calculating poultry litter
2 production. Did you perform any calculations of
3 annual poultry waste production based on bird
4 populations?

5 A I did not. I assisted with those, but I did 01:41PM
6 not actually perform those estimates.

7 Q Well, on Page 24 of your expert report, you
8 say that your estimate is conservative because other
9 estimation approaches discussed by Dr. Engel yield
10 estimates that exceed 500,000 tons; do you see that? 01:42PM

11 A That's correct.

12 Q Does the mere fact that one of the other
13 experts being paid by Motley Rice has come up with a
14 higher number necessarily mean that your number is
15 conservative? 01:42PM

16 MR. GARREN: Object to form.

17 A Well, I think that that mischaracterizes what
18 I've said. What I've said is that my number is
19 lower than this number from Dr. Engel. Dr. Engel's
20 number is based upon standard computational methods 01:42PM
21 used by the U.S. Department of Agriculture.

22 Q You're not saying, though, simply because Dr.
23 Engel has developed an estimate that's higher than
24 yours, that yours must be conservative?

25 MR. GARREN: Object to form. 01:42PM

1 Q Why not?

2 A Well, because the functional form of the
3 increase in phosphorus especially but the lockstep
4 variation of all of these materials, I don't

5 think -- put it this way: I don't think you'll find 05:50PM

6 a watershed in which that's true, in which if you
7 didn't have poultry inputs, you would find the same
8 pattern of phosphorus, and you would not find the
9 same pattern of relationship between phosphorus and
10 the other constituents we've been discussing. 05:50PM

11 Q Dr. Fisher, in light of that, did you examine
12 any sediment samples collected from Lake Stockton or
13 Broken Bow where you did some sampling in this case?

14 A I was never concerned with those lakes.

15 Q You never did any sampling on those lakes? 05:50PM

16 A I never did any sampling on those lakes.

17 Q Are you aware those lakes were sampled by the
18 expert team assembled by Motley Rice in this case?

19 A Yes.

20 Q Okay, and do you know whether sediment samples 05:51PM
21 were collected from those two supposed controlled
22 watersheds?

23 A I don't recall. I don't know. Put it this
24 way.

25 Q You didn't ask for any sediment samples to be 05:51PM